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From:

Sent: Tuesday, March 30, 2010 9:14:40 AM

To:

Cc:

Subject: Question on return preparer penalty

You asked for assistance in determining whether the section 6694(a) penalty applies to and tax returns. Pursuant to section 6694(a) (as amended by the TEAMTRA of 2008) and Notice 2009-5, the "substantial authority" standard generally is the relevant standard for undisclosed positions for tax returns prepared after May 25, 2007 (unless the position is a reportable transaction with a significant purpose of federal tax avoidance or evasion or a listed transaction). For the 2007 tax return, Notice 2009-5 also provides that no penalty applies if a tax return preparer relied on the interim guidance provided in Notice 2008-13, which generally held preparers to a more stringent "more likely than not" standard than the substantial authority standard. Accordingly, the section 6694(a) penalty is applicable for an undisclosed position in either year if there was not substantial authority for the position on the date the return is deemed prepared or on the last day of the taxable year to which the return relates.

The authorities to consider in determining whether there was substantial authority are those authorities described in Treas. Reg. section 1.6662-4(d)(3)(iii) (e.g., the Internal Revenue Code; proposed, temporary, and final regulations; revenue rulings; revenue procedures, and cases, among others). The Coordinated Issue Paper is not an appropriate authority to consider in determining whether substantial authority existed for purposes of the section 6694(a) penalty. The Code sections and revenue procedure cited in the CIP, however, are appropriate authorities to consider along with any relevant case law on the issue. We recommend that you coordinate with the Office of the Associate Chief Counsel

to assist you in determining whether there was substantial authority for the positions in question. Please contact me with any comments or questions or if you would like me to assist you with this coordination.

Thank you.